

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Waiver by)	
)	File No. _____
Matrix Communications Corporation)	
Kansas City, MO)	
)	
Toll-Free Number Administration)	CC Docket No. 95-155

PETITION FOR WAIVER--EXPEDITED ACTION REQUESTED

Pursuant to section 1.3¹ of the rules of the Federal Communications Commission (“FCC” or “Commission”) and the Communications Act of 1934, as amended (“Communications Act”), Matrix Communications Corporation (“Matrix”), by and through its counsel, hereby petitions the Commission to grant a waiver of the rules governing the administration of toll-free numbers in order to allow the transfer of a toll-free number from its current subscriber, IBM Corporation (“IBM”), to Matrix. IBM is willing to transfer the toll-free number to Matrix for **free** provided the FCC authorizes the transfer.

BACKGROUND

Matrix printed the toll-free number 800-837-4966 on its marketing materials in the belief that it was the subscriber of the toll-free number, when in fact 800-837-4966 is subscribed to IBM.

When Matrix discovered that the toll-free number was subscribed to IBM, Matrix contacted IBM concerning the situation. Although the toll-free number is subscribed to IBM, the number is of no particular importance or value to IBM. In fact, IBM has indicated that it does not have any plans to use the number in the future. IBM has agreed to transfer the toll-free

number to Matrix for **free** provided the FCC authorizes the transfer. In view of the unique facts in this case, Matrix is requesting that the FCC authorize the transfer of the toll-free number 800-837-4966 from IBM to Matrix.

DISCUSSION

It is appropriate that this petition be brought before the FCC because Section 251 (e)(1) of the Communications Act provides the Commission exclusive jurisdiction over the portions of the North American Numbering Plan that pertain to the United States, which includes but is not limited to toll-free numbers.

Section 1.3 of the Commission's rules states that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."² Good cause exists because, as the unique facts in this case demonstrate, allowing the transfer of the particular toll-free number in this case from one subscriber to another actually serves the "public interest in the conservation of the scarce toll-free resource"³ and furthers the underlying purpose of the Commission's rules by promoting "the orderly use and allocation of toll-free numbers."⁴

Matrix's petition requesting that the FCC authorize the transfer of the toll-free number in question from IBM to Matrix represents a good cause for the following reasons:

1. Refusing to Transfer the Toll-Free Number Would Be Contrary to the Underlying Purpose of the Commission's Rules and Contrary to the Public Interest.

Although the toll-free number in question is subscribed to IBM, the number is inactive and IBM does not intend to utilize the number in the future. Therefore, if the toll-free number is not transferred to Matrix it will simply remain an inactive number at IBM. This would maintain

¹ 47 C.F.R. § 1.3.

² Id.

³ 47 C.F.R. § 52.107.

the status quo but it would be contrary to underlying purpose of the Commission's rules in that the number would not serve the "public interest in the conservation of the scarce toll-free resource."⁵ Furthermore, the Commission's "responsibility to promote the orderly use and allocation of toll-free numbers"⁶ would be undermined by the fact that unless the Commission authorizes the transfer, the toll-free number will not be used at all.

2. If the Toll-Free Number is Returned to Spare Status and Assigned On A First Come, First Serve Basis to A New Customer, It Would Be to the Detriment of the New Customer.

The Commission's rules governing the administration and allocation of toll-free numbers state that if IBM does not intend to use the toll-free number in question, it can disconnect the toll-free number and return it to Spare Status where the toll-free number will be assigned on a first come, first serve basis to a new customer. This, however, would be to the detriment of the new customer.

If the toll-free number were assigned to a new customer, the new customer would be burdened by calls intended for Matrix. The toll-free number would be a liability rather than an asset to the new customer. It is, therefore, reasonable to conclude that the new customer would have been far better served by receiving a different toll-free number.

Holding strictly to the "first come, first served" policy by returning the number to Spare Status would be to the detriment of the customer receiving the number and would undermine the Commission's primary goal, which is "the orderly use and allocation of toll-free numbers."

⁴ Id.

⁵ Id.

⁶ Id.

3. The Rules Governing the Administration of Toll-Free Numbers Contemplate that The Commission is Charged With Granting Waivers to the Rules in Order to Meet Its Primary Goal of the “Orderly Use and Allocation of Toll-Free Numbers.”

The Commission’s rules empower the Commission to waive any provision of the rules on its own motion or on petition if good cause is shown.⁷ The rules contemplate that the Commission will step in and grant a waiver of the rules in instances in which strict adherence to the rules would frustrate the underlying purpose of the rules. This is particularly true of the “first come, first served” policy, which states that “[t]oll-free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission.”⁸ (*Emphasis added.*)

4. Transferring the Toll-Free Number Would Not Be A Violation of the Hoarding Regulations Because IBM is Willing to Transfer the Number to Matrix for Free.

Matrix understands that the “hoarding” regulations at section 52.107 of the Commission’s rules prohibit selling a toll-free number for a fee and that the Commission vigorously enforces this provision.⁹ This, however, is not a concern in this case. The toll-free number in question is of no particular importance or value to IBM and IBM has agreed to transfer the toll-free number to Matrix for free provided the FCC authorizes the transfer.

5. If The Toll-Free Number is Transferred, Matrix Will Put the Number to Good Use.

The toll-free number in question is of value to Matrix. If the number is transferred from IBM to Matrix, Matrix will put the number to good use and Matrix will be able to proceed with its business plan without prejudice to IBM or any third party. If the FCC is unwilling to authorize the transfer of the toll-free number from IBM to Matrix, the number will go unused and Matrix will be forced to alter or abandon its business plan.

⁷ 47 C.F.R. § 1.3.

⁸ 47 C.F.R. § 52.111.

⁹ 47 C.F.R. § 52.107.

In contrast, the number is of no value to IBM and IBM does not intend to utilize the number in the future. IBM has, therefore, agreed to transfer the toll-free number to Matrix provided the FCC authorizes the transfer. Furthermore, if the toll-free number were returned to Spare Status and assigned to a new customer, it would be a liability rather than an asset to the new customer.

Conclusion

For the foregoing reasons, Matrix respectfully requests that the Commission issue a waiver of the rules governing the administration of toll-free numbers by authorizing the transfer of the toll-free number 800-837-4966 from IBM to Matrix. Matrix further requests that the Commission render its decision concerning this petition on an expedited basis.

Respectfully submitted,

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